

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

AUG 06 2012

PATRICK E. DUFFY CLERK
BY

Deputy Clerk
U.S. DISTRICT COURT
BILLINGS DIVISION

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| JODI C. PIERCE, |) | |
| |) | Cause No. CV-11-105-BLG-RFC |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER ADOPTING FINDINGS |
| |) | AND RECOMMENDATIONS OF |
| MICHAEL J. ASTRUE, |) | U.S. MAGISTRATE JUDGE |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Jodi Pierce filed this action for judicial review of the determination that she was not eligible for disability insurance benefits and supplemental security income because she was not disabled. Pending before the Court is the review of U.S. Magistrate Judge Carolyn S. Ostby's Findings and Recommendations (doc. 23) as to the parties' cross-motions for summary judgment. Judge Ostby recommends that Pierce's motion be denied and that the Commissioner's be granted.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). Pierce has filed timely objections (doc. 24), to which the Commissioner has replied (doc. 25). Accordingly, the Court must make a *de novo* determination of those portions of

the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). For the following reasons, Pierce's objections are overruled.

Pierce's first objection is that Judge Ostby failed to incorporate her proposed uncontested findings of facts and that consideration of her proposed findings of fact would require summary judgment in her favor. Regardless, a review of her statement of facts (doc. 15) reveals that many of her facts were also contained in the Commissioner's statement of facts (doc. 21) and that Judge Ostby considered many of them. Further, Pierce's cursory statement that consideration of her proposed facts would require summary judgment in her favor does not establish that as fact.

Second, Pierce objects to Judge Ostby's rejection of the testimony of counselor Tim Dove and nurse practitioner Laura Wetherelt. But Judge Ostby correctly concluded the ALJ gave germane reasons for rejecting the testimony of these "other sources." *See Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

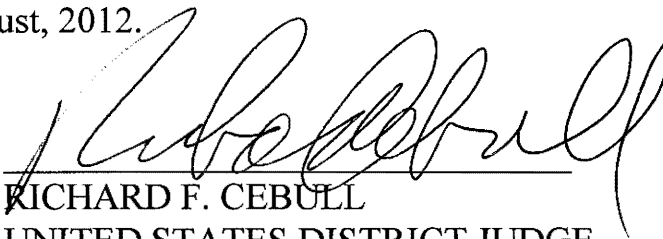
Third, Pierce objects to Judge Ostby's conclusion that the ALJ correctly assessed Pierce's credibility in rejecting her subjective complaints. The Findings and Recommendations, however, correctly conclude that the ALJ gave specific, clear, and convincing reasons for discounting Pierce's subjective complaints as required by *Molina*. 674 F.3d at 1112-13.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety.

Accordingly, the Commissioner's decision denying disability insurance benefits and supplemental security income is affirmed. **IT IS HEREBY ORDERED** that Pierce's Motion for Summary Judgment (doc. 13) is **DENIED** and the Commissioner's Motion for Summary Judgment (doc. 19) is **GRANTED**.

The Clerk of Court shall notify the parties of the making of this Order, enter judgment, and close this case.

DATED this 6 day of August, 2012.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE